

SENATE, No. 1372 - REDRAFT

The Commonwealth of Massachusetts



In the Year Two Thousand and Five.

AN ACT TO REFORM AND REORGANIZE THE EXECUTIVE OFFICE OF PUBLIC SAFETY AND COMMONWEALTH SECURITY

*Be it enacted by the Senate and House of Representatives in General Court assembled,
and by the authority of the same, as follows:*

SECTION 1. Section 18 of chapter 6A of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended in the first sentence after the words "executive office of public safety," the words, "department of public safety," and inserting in place thereof, the words, "department of building and construction safety."

SECTION 2. Section 18 ½ of chapter 6A of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended in the first sentence by striking out the words "four," and inserting in place thereof, the word "five."

Said section 18 ½ is hereby further amended in the second paragraph, by striking out the words "department of inspection and regulation," "the division of inspection," and "architectural access board."

Section 18 ½ is hereby further amended by inserting after the second paragraph, the following new paragraph,

One undersecretary shall be the undersecretary for building and construction safety and shall oversee the functions and administration of the following boards and agencies:

the department of inspection and regulation, the board of building regulations and standards, division of inspection, the architectural access board, the board of boiler rules, the bureau of pipe-fitters, refrigeration technicians, and sprinkler fitters, the board of pipe fitters, refrigeration technicians and sprinkler fitters, and the state building code appeals board.. Said undersecretary, who shall serve as commissioner of the department of building and construction safety, established pursuant to chapter 22, shall work in cooperation with the department of fire services with respect to coordination of regulation and inspection of the safety of building structures in the Commonwealth.

The person appointed to serve as undersecretary for building and construction safety shall have had at least ten years of experience in the supervision of building construction or design or in the alternative a graduate degree in a field related to building construction or design or any combination of education and experience which would confer equivalent knowledge and ability, as determined by the board. In addition, such person shall have had a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation, safe exits and the requirements of section thirteen A of chapter twenty-two and the rules and regulations promulgated pursuant thereto pertaining to accessible design standards; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

SECTION 3. Section 1 of chapter 146 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended by striking ~~out~~ the words "public safety," wherever it appears in said section, and inserting in place thereof, the words "building and construction safety."

SECTION 4. Chapter 22 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended by striking out the title "Department of Public Safety," and inserting in place thereof a new title, "Department of Building and Construction Safety."

SECTION 5. Section 1. of chapter 22 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended by striking out the words "public safety," wherever it appears, and inserting in place thereof the words, "building and construction safety."

SECTION 6. Section 5 of chapter 22 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended in the first sentence, by striking out the words, "with the approval of the governor and council," and the words, "with like approval."

SECTION 7. Section 6 of said chapter 22 is hereby amended by striking out the words, "only with the approval of the governor and council," and inserting in place thereof the words, "subject to appropriation."

SECTION 8. Chapter 143 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended in the first sentence in section 1, by striking out the words “department of public safety,” wherever it appears, and inserting in place thereof the words, “department of building and construction safety, and said chapter is hereby further amended in the first sentence in section 100, by striking out the words “department of public safety,” and inserting in place thereof the words, “department of building and construction safety.”

SECTION 9. Section 3 of chapter 143 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended by striking said section 3, and inserting in place thereof, the following new section:

Section 3. The chief administrative officer of each city or town, and where no such position exists, the board of selectmen, shall, subject to the approval of the commissioner of building and construction safety, employ and designate an inspector of buildings or building commissioner as well as such other local inspectors as are reasonably necessary to assist the inspector of buildings or building commissioner to administer and enforce the state building code as well as section thirteen A of chapter twenty-two and the rules and regulations made under the authority thereof. The building commissioner or inspector of buildings shall be the administrative chief in a city or town responsible for administering and enforcing the state building code as well as section thirteen A of chapter twenty-two and the rules and regulations made under the authority thereof. Any additional persons employed by a city or town to assist the building commissioner or inspector of buildings in the performance of his duties shall be called local inspectors. The local inspector shall also be responsible for enforcing the state building code as well as section thirteen A of chapter twenty-two and the rules and regulations made under the authority thereof. The inspector of buildings or building commissioner shall report operationally to the person or public body that appointed him, and shall submit annually, and at such other times as directed by the commissioner, a report or reports to the state department of building and construction safety. He may be removed for just cause, after a hearing, by the appointing authority or the commissioner. Two or more cities or towns may combine and share expenses in the appointment of any building commissioner or inspector of buildings and local inspectors. If the board of selectmen of two or more towns so vote, such towns may enter into an agreement with the commissioner of the state department of building and construction safety relative to the appointment and compensation of a building commissioner or inspector of buildings and local inspectors. The commissioner shall apportion the budget approved for the building commissioner or inspector of buildings and local inspectors in accordance with said agreement. Said apportionment shall forthwith be certified by said commissioner to the board of selectmen of each member town and the amounts so certified shall be appropriated and paid in accordance with provisions of said agreement.

Each inspector of buildings or building commissioner shall have had at least five years of experience in the supervision of building construction or design or in the alternative a four year undergraduate degree in a field related to building construction or design or any combination of education and experience which would confer equivalent knowledge and

ability, as determined by the board. In addition, such person shall have had a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation, safe exits and the requirements of section thirteen A of chapter twenty-two and the rules and regulations promulgated pursuant thereto pertaining to accessible design standards; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

Each local inspector shall have had at least five years of experience in the supervision of building construction or design or in the alternative a two year associate degree in a field related to building construction or design or any combination of education and experience which would confer equivalent knowledge and ability, as determined by the board. In addition, such persons shall have a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation and safe exits; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

In the event that a city or town shall be without a local inspector, the board of building regulations and standards may, with the approval of the commissioner, direct an inspector to temporarily fulfill the duties of the local inspector for a period not to exceed thirty days, and renewable in thirty day allotments until a permanent inspector is designated in accordance with the provisions of this section. In such an event the inspector shall have all the powers of a local inspector. Each city or town shall reimburse the commonwealth for the actual cost of such services provided.

The clerk of each city and town shall annually, not later than April first, transmit to the board of building regulations and standards in writing the name and official address of each inspector of buildings or building commissioner and each local inspector in such city or town, and shall notify the board of any changes within thirty days of appointment.

Every inspector of buildings, building commissioner or local inspector shall be certified by the board of building regulations and standards in accordance with regulations promulgated by said board. No individual shall be permitted to serve as an inspector of buildings, building commissioner, or local inspector who has not been certified in accordance with the provisions established by the board.

An inspector of buildings, building commissioner or local inspector may be suspended or removed for just cause after a hearing by the board of building regulations and standards in accordance with regulations promulgated by said board

SECTION 10. Section 3Y of chapter 143 of the General Laws, as most recently appearing in the 2004 Official Edition, is hereby amended by striking out said section, and inserting in place thereof, the following new section:

Section 6 and 7. Eliminates the reference to approval by the governor and council. The requirement for approval of appointments by the Executive Council was repealed by vote of the people forty years ago, but was never corrected in these section of the General Laws. The appointments should be the sole responsibility of the Secretary who is responsible to the Governor.

Section 8. Simply reflect the change in the name of the agency where it appears in these sections of the General Laws.

Section 9 and 10. Strengthens state oversight of local building officials who are responsible for administering the State Building Code. Provides that the local appointment must be approved by the Commissioner of Building and Construction Safety, that only certified individuals may be appointed to the positions and that the Commissioner as well as the local appointing authority have the authority for suspension or removal of a local building official after a hearing.

Section 11. Simply reflect the change in the name of the agency where it appears in these sections of the General Laws.

Section 12, 13, and 14. Permits the Massachusetts Board of Building Regulations and Standards to study and identify resources necessary to establish a system or network providing access to building codes information and uniform electronic services for: permitting, building plans submittals and tracking (and later plans review), and inspections for all building code jurisdictions within the state. Allows the Massachusetts Board of Building Regulations and Standards to develop and raise necessary fees to support pilot program in regional areas (surrounding and including state's most populous city) to provide electronic access to building codes information and administrative and regulatory services (including online permitting, electronic plans submittal and later online plans review). Provides for the Massachusetts Board of Building Regulations and Standards to report back to the legislature within two years on outcome of savings from pilot program and provide legislature plan for expanding that program uniformly throughout the Commonwealth. The sections are taken from the model law developed by the National Conference of States on Building Codes and Standards *Streamlining Project*. It is based on Oregon SB 713 which passed the Oregon State Legislature and was signed into law by Governor Ted Kulongoski in June 2003. These sections provide for the pilot project to be completed by December 1, 2007 together with recommendations for how to expand the technology to cover the entire state.

Section 15. Creates a safe building surcharge similar to the law enacted in Minnesota to pay for the implementation, updating and administration of the State Building Code and other codes. The municipality will collect the surcharge and remit it to the state, however they are permitted to deduct a fee for administration of the surcharge. This section addresses the long standing concern that the state agency needs sufficient resources to provide oversight and inspection of building and construction safety without having to depend solely on appropriations. Communities over 20,000 will file a report and pay the

amounts collected on a monthly basis and smaller towns will do the same on a quarterly basis. The surcharge is not a new tax, but is a fee based on the size and value of the project to be constructed.

Section 16 Creates a safe building trust fund into which the surcharge created in Section 15 would be paid and allows the Commissioner to draw down from the fund without appropriation to pay for the operation of his agency. The Commissioner must report annually to the General Court on how the money has been expended in the preceding year and how he plans to expend it in the next year.

Section 17. There is considerably concern that local public buildings such as schools and libraries that are heavily subsidized by the state are not adequately maintained leading to significant demands for additional taxpayer dollars to repair or replace these facilities earlier than the expected life cycle of such facilities. This section directs local building officials to annual inspect the facilities to ensure that the maintenance plan for the buildings are being followed and to report to the appointing authority and to the state regarding each inspection. The section allows local officials to impose a reasonable fee for the cost of the inspection and report.

Section 18. There have been allegations of unfairness in the awarding of federal grants, especially for homeland security purposes, by the Executive Office of Public Safety. This section establishes a special commission to develop guidelines for the award of such funding.

Section 19. Establishes a new requirement for maintenance plans for public libraries where the state board of library commissioners assists with the funding of construction or renovation in order to maximize the life cycle of the buildings for the benefit of taxpayers.

Section 20. Specifies that most of the changes would occur on July 1, 2006.

Section 21. Specifies that the special commission established under section 18 would become immediately effective.

Section 3Y. In any city or town which accepts the provisions of this section, an inspector of buildings, building commissioner or local inspector so employed and designated under this section, and certified in accordance with the provisions of section 3 of chapter 143, shall be appointed for a minimum term of three years and such three year term or more shall not be diminished by an unexpired term of a predecessor, and he shall not be removed from office during his term except for just cause and after a hearing has been held on charges by and before the appointing authority or the commissioner, provided however, that the commissioner may suspend said official prior to said hearing for a period not in excess of fourteen days.

SECTION 11. Board of Building Regulations and Standards

Section 93 of chapter 143 of the general laws, as most recently appearing in the 2004 Official Edition is hereby amended, by striking out the words, "public safety," wherever it appears, and inserting in place thereof, the words "building and construction safety."

SECTION 12. Technology Streamlining for Building Code Administration.

(a) The board of building regulations and standards, subject to appropriation, shall identify the resources to develop and maintain a system or network that provides electronic access to building codes information and services including uniform online permitting, plans submittals and plans reviews for all building code jurisdictions within the state.

In this regard, the board shall explore the availability of alternative means for establishing a statewide system or network for building codes information and services, including but not limited to, developing resource sharing arrangements with private industry, obtaining foundation grants, and obtaining federal funding.

(b) The board shall complete any identification and exploration work described in subsection (a) of this section and report the results of any such work to the General Court on or before December 1, 2007 together with any recommendations for legislation or appropriations.

SECTION 13. Technology Pilot Project

(a) The board of building regulations and building standards, in cooperation with the a limited number of political subdivisions of the Commonwealth shall develop, and is authorized to promulgate regulations to establish through special permit fees adequate funding to develop and implement a pilot program that provides electronic access to building codes information and uniform codes administration and enforcement services for the participating municipalities.

The building codes information and services available through the pilot program shall include, but are not limited to:

- i. Licensing, permit, inspection and other relevant information;
- ii. The provision for electronic submission of uniform permit applications;
- iii. The electronic issuance of minor label or other appropriate permits;
- iv. The electronic submission of building plans;
- v. Access to other permit and inspection processes; and
- vi. Scheduling of inspections, conduction of inspections, tracking of corrections, plans, and granting of approvals.

(b) The board shall report to the General Court on or before December 1, 2008, regarding the progress made and savings to the construction industry, consumers and local government from the implementation and administration of a pilot program under this section.

(c) Said report to the General Court shall include recommendations and an implementation plan for, and estimation of the costs involved in, expanding the pilot project throughout the state.

SECTION 14. Electronic Signatures Authorized

Any transaction conducted through a state or local system or network that provides electronic access to building information and services shall be consistent with the provisions of chapter 110G the Uniform Electronic Transactions Act, relative to any requirement for a signature or the submission of handwritten materials.

SECTION 15. Safe Building Surcharge

Chapter 6A of the general laws, as most recently appearing in the 2004 Official Edition, is hereby amended by inserting after section 18H, the following new section:

Section 18L. Safe Building Surcharge

There is hereby established a safe building surcharge for the purpose of implementing, updating, and administration of the State Building Code and related codes.

a). Computation. To defray the costs of administering the State Building Code and related codes, a surcharge is imposed on all permits issued by municipalities in connection with the construction of or addition or alteration to buildings and equipment or appurtenances after June 30, 2006, as follows:

If the fee for the permit issued is fixed in amount the surcharge is equivalent to one-half mill (.0005) of the fee or 50 cents, whichever amount is greater. For all other permits, the surcharge is as follows:

- (1) if the valuation of the structure, addition, or alteration is \$1,000,000 or less, the surcharge is equivalent to one-half mill (.0005) of the valuation of the structure, addition, or alteration;

- (2) if the valuation is greater than \$1,000,000, the surcharge is \$500 plus two-fifths mill (.0004) of the value between \$1,000,000 and \$2,000,000;
- (3) if the valuation is greater than \$2,000,000, the surcharge is \$900 plus three-tenths mill (.0003) of the value between \$2,000,000 and \$3,000,000;
- (4) if the valuation is greater than \$3,000,000, the surcharge is \$1,200 plus one-fifth mill (.0002) of the value between \$3,000,000 and \$4,000,000;
- (5) if the valuation is greater than \$4,000,000, the surcharge is \$1,400 plus one-tenth mill (.0001) of the value between \$4,000,000 and \$5,000,000; and
- (6) if the valuation exceeds \$5,000,000, the surcharge is \$1,500 plus one-twentieth mill (.00005) of the value that exceeds \$5,000,000

b). Collection and reports. All permit surcharges must be collected by each municipality and a portion of them remitted to the state. Each municipality having a population greater than 20,000 people shall prepare and submit to the commissioner once a month a report of fees and surcharges on fees collected during the previous month but shall retain the greater of two percent or that amount collected up to \$25 to apply against the administrative expenses the municipality incurs in collecting the surcharges. All other municipalities shall submit the report and surcharges on fees once a quarter but shall retain the greater of four percent or that amount collected up to \$25 to apply against the administrative expenses the municipalities incur in collecting the surcharges. The report, which must be in a form prescribed by the commissioner, must be submitted together with a remittance covering the surcharges collected by the 15th day following the month or quarter in which the surcharges are collected. All money collected by the commissioner through surcharges and other fees prescribed by this section shall be deposited in the safe building trust fund established pursuant to section 35X of chapter 10 of the general laws, and is appropriated to the commissioner for the purpose of administering and enforcing the State Building Code and related codes.

SECTION 16. Safe Building Trust Fund.

Chapter 10 of the General Laws as most recently appearing in the 2004 Official Edition is hereby amended by inserting after Section 35W, the following new section:

Section 35X. Safe Building Trust Fund

(a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Safe Building Trust Fund. There shall be credited to such fund all revenues received by the commonwealth from surcharges imposed under section 18I of chapter 6A; from appropriations; from gifts, grants, contributions and bequests of funds from any department, agency or subdivision of federal, state or municipal government, and any individual foundation, corporation, association or public authority; revenue derived from the investment of amounts credited to the fund; and any federal funds made available for emergency telecommunication services. The fund shall be used solely for the purposes described in said section 18I of said chapter 6A.

(b) Amounts credited to the fund shall be available for expenditure by the Board of Building Regulation and Standards, without further appropriation. The board shall report annually to the general court its planned expenditures for the next fiscal year; the uses to which the fund was used in the last fiscal year and the balance remaining in the fund; and the aggregate surcharges collected in the last fiscal year based upon quarterly reports of municipalities required under subsection (b) of section 181 of chapter 6A. The report shall also include a request, if necessary, for appropriation for deposit in the fund.

SECTION 17. Public Building Maintenance Inspection

Section 3 of chapter 143 of the general laws, as most recently appearing in the 2004 Official Edition, is hereby amended by adding at the end thereof the following new paragraph:

The inspector of buildings or building commissioner appointed in accordance with the provisions of this section shall annually inspect and issue a report relative to the maintenance of school facilities within his jurisdiction in accordance with the maintenance standards required pursuant to the provisions of section 16 of chapter 70B and the maintenance of library facilities funded through section 19G of chapter 78. Said report shall be provided to the appointing authority and to the state school building authority. For the purpose of paying for the cost of said inspection and report, the inspector of buildings or building commissioner shall be authorized to assess a reasonable fee to be paid by the school district.

SECTION 18. Grants Fairness Commission

Section 5A. Section 18 3/4 of chapter 6A of the General Laws as appearing in the 2002 Official Edition, is hereby amended, by inserting at the end, thereof the following new section – Section 18 3/4 A:

Establishes Commission to Ensure Fairness in Awarding Federal Grants

Section 18.75A. Federal Grants Review Commission

There is hereby established within the Executive Office of Public Safety, a Federal Grants Review Commission composed five members, one of whom shall be appointed by the Auditor, one of whom shall be appointed by the Inspector General, one of whom shall be appointed by the Comptroller; one of whom shall be appointed to represent the Massachusetts Police Chief's Association designated by the President thereof, and one of whom shall be appointed to represent the Massachusetts Fire Chief's Association, designated by the President thereof.

The commission shall have the power to review any and all federal grant programs and related matters with regard to ensuring state compliance with the terms of said grants and shall be responsible for ensuring fairness in the allocation and award of grant funds. The commission shall promulgate rules and regulations regarding the process by which they shall carry out their statutory role. The Secretary of Public Safety and every department head within the executive office of public safety shall cooperate fully with the work of the commission.

SECTION 19. Safety and Maintenance of Public Libraries.

Section 19G of chapter 78 of the general laws, as most recently appearing in the 2004 Official Edition is hereby amended by adding at the end thereof the following new paragraph:

The board shall create a maintenance assessment program for public libraries. Such assessment program shall include a review of all major building components, maintenance records, existing staff and vendor contracts. The board shall use such assessment program to issue ratings of the building conditions for each municipality; survey current conditions, develop a model plan for the proper maintenance of library buildings, and provide technical assistance and information to municipalities.

SECTION 20. Sections 1 through 17 of this act shall take effect on July 1, 2006

SECTION 21. Section 18 of this act shall take effect upon passage.